

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RODRIGO ANDRADE,)	Case No. 8:18-cv-00959-JAK-JC
)	
Petitioner,)	ORDER ACCEPTING FINDINGS,
)	CONCLUSIONS, AND
v.)	RECOMMENDATIONS OF
)	UNITED STATES MAGISTRATE
)	JUDGE
S. FRAUENHEIM,)	
)	
Respondent.)	

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition for Writ of Habeas Corpus by a Person in State Custody (“Petition”) and all of the records herein, including the June 25, 2021 Report and Recommendation of United States Magistrate Judge (“Report and Recommendation”), and petitioner’s objections thereto filed on October 22, 2021 (“Objections”).¹

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¹Petitioner attached to the Objections exhibits as to which petitioner requested that the Court take judicial notice, as well as orders from the Orange County Superior Court, the California Court of Appeal, and the California Supreme Court denying petitions for writ of habeas corpus. The exhibits are copies of some documents that were included in the Lodged Documents (Docket No. 17). Since the exhibits are part of the record that the Court already has considered, the Court declines to grant petitioner’s request for judicial notice.

1 The Court has made a *de novo* determination of those portions of the Report
2 and Recommendation to which objection is made. The Court concurs with and
3 accepts the findings, conclusions, and recommendations of the Magistrate Judge
4 reflected in the Report and Recommendation, and overrules the Objections. The
5 Court discusses petitioner's principle objections herein.

6 In his Objections, petitioner repeats his prior claims and attempts to raise
7 additional assertedly newly-exhausted claims alleging: (1) there was insufficient
8 evidence to support his convictions; (2) his trial and appellate counsel were
9 ineffective for failure to raise a separate prosecutorial misconduct claim based on
10 the prosecution's delayed disclosure to the defense of petitioner's March 19, 2012
11 interview with police; and (3) an Eighth Amendment challenge to his sentence.
12 (Objections at 3-18). Petitioner asserts that the Court should consider his newly-
13 exhausted claims now because he is actually innocent. (Objections at 17-18).

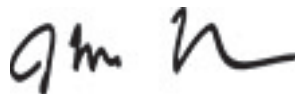
14 The Court previously has considered petitioner's new claims in the context
15 of petitioner's motion to stay these proceedings and found that these claims are
16 plainly meritless. See Docket No. 63 at 2-4 (order discussing same); see also
17 Docket No. 55 at 13-15 (Report and Recommendation re the stay motion
18 discussing same). Nothing in the Objections undermines these findings.

19 For the foregoing reasons, IT IS HEREBY ORDERED that the Petition is
20 denied on the merits, this action is dismissed with prejudice and Judgment be
21 entered accordingly.

22 IT IS FURTHER ORDERED that the Clerk serve copies of this Order and
23 the Judgment herein on petitioner and on respondent's counsel.

24 IT IS SO ORDERED.

25 DATED: December 6, 2021

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28 JOHN A. KRONSTADT
UNITED STATES DISTRICT JUDGE